

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Izell D. Hair,)
vs.)
Plaintiff,)
vs.)
Brian Kendall, Timothy Clark, Carol)
Holmes, Albert Mack, Travis Guess,)
and Shonta Robinson,)
Defendants.)
Civil Action No. 2:21-cv-1345-TMC
ORDER

Plaintiff Izell D. Hair, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983. (ECF Nos. 1; 2; 11). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), this matter was referred to a magistrate judge for all pretrial proceedings. On August 3, 2021, Defendants filed a joint motion to dismiss the Complaint for failure to state a claim. (ECF No. 19). On August 11, 2021, Plaintiff filed his response in opposition to Defendants' motion (ECF No. 26), and Defendants filed a joint reply (ECF No. 28).

Now before the court is the magistrate judge's Report and Recommendation ("Report"), recommending that the court grant in part Defendants' motion to dismiss. (ECF No. 30). Specifically, the magistrate judge recommended that the motion be granted with respect to Plaintiff's § 1983 claims for monetary damages against Defendants in their official capacities based on Eleventh Amendment immunity. *Id.* at 5, 6. Additionally, the magistrate judge recommended the court grant the motion as to Plaintiff's claims for injunctive relief against Defendants Clark, Carol, Holmes, Mack, Guess, and Robinson. *Id.* However, as to Plaintiff's

claim for injunctive relief against Defendant Brian Kendall—the current Warden of Lieber Correctional Institution where Plaintiff is detained—the magistrate judge found that “[c]onstruing the Complaint in the light most favorable to Plaintiff . . . Kendall, as Warden, would presumably have the power to influence policy on prison conditions for the inmates at Lieber Correctional Institution.” *Id.* at 5–6 (citing *Wilson v. United States*, 332 F.R.D. 505, 528 (S.D. W. Va. 2019)). Accordingly, the magistrate judge recommended the court deny the motion as to the claim for injunctive relief against Defendant Kendall.

The Report was mailed to Plaintiff at the address he provided the court, (ECF No. 31), and has not been returned as undeliverable. Therefore, Plaintiff is presumed to have received the Report. The parties were advised of their right to file specific objections to the Report, (ECF No. 30 at 7), but failed to do so. The time for the parties to object to the Report has now expired, and this matter is ripe for review.

The magistrate judge’s recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *Wimmer v. Cook*, 774 F.2d 68, 72 (4th Cir. 1985) (quoting *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). Nevertheless, “[t]he district court is only required to review *de novo* those portions of the report to which specific objections have been made, and need not conduct *de novo* review ‘when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.’” *Farmer v. McBride*, 177 Fed. App’x 327, 330–31 (4th Cir. April 26, 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)). The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, in the absence of specific objections to the Report and Recommendation, this Court is

not required to give any explanation for adopting the recommendation. *Greenspan v. Brothers Prop. Corp.*, 103 F. Supp. 3d 734, 737 (D.S.C. 2015) (citing *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983)).

Thus, having reviewed the Report and the record and, finding no clear error, the court agrees with and wholly **ADOPTS** the magistrate judge's findings and recommendations in the Report (ECF No. 30), which is incorporated herein by reference. Accordingly, the court **GRANTS in part** Defendants' motion to dismiss (ECF No. 19). Plaintiff's claims for monetary damages against all Defendants in their official capacities, as well as the claims for injunctive relief against Defendants Timothy Clark, Carol Holmes, Albert Mack, Travis Guess, and Shonta Robinson are **DISMISSED**. The motion is **DENIED**, however, as to Plaintiff's claim for injunctive relief against Defendant Brian Kendell. Defendants Clark, Holmes, Mack, Guess, and Robinson are hereby dismissed as parties to this action.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
September 14, 2021

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.